

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107



**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**



SDMS DocID 2051212

**MAR 16 1994**

Mark M. Wilcox, Esq.  
Drinker, Biddle & Reath  
Attorneys for Congoleum Corporation  
1100 Philadelphia National Bank Building  
Philadelphia, PA 19107

Re: **Delaware Sand & Gravel Superfund Site: "Special  
Notice" for Negotiations for Remedial Design & Remedial  
Action/Demand for Payment of Costs**

Dear Mr. Wilcox:

This letter relates to the liability of Congoleum Corporation ["Congoleum"] in connection with the Delaware Sand & Gravel Superfund Site located in New Castle, Delaware ["Site"].

**INTRODUCTION**

The United States Environmental Protection Agency ["EPA" or "Agency"] has conducted and overseen activities undertaken at the Site in response to the release and/or threat of release of hazardous substances, pollutants, or contaminants into the environment. By letter dated March 19, 1992 EPA notified Congoleum of its potential liability for such response action pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ["CERCLA"], 42 U.S.C. § 9607. EPA has selected remedial action for implementation at the Site, which remedial action is described in a document called a Record of Decision ["ROD"] issued by EPA on April 22, 1988 and amended on September 29, 1993. EPA is now contacting you in an attempt to resolve Congoleum's liability with respect to the above-captioned matter. Toward that end, this letter contains:

1. A formal demand for reimbursement of unreimbursed costs that the United States has paid (including interest thereon) and that are to be paid (which are subject to interest) in conducting and/or overseeing response actions at the Site (Demand for Payment);
2. Notification that a limited period of formal negotiations

for an agreement under which Congoleum will implement the requirements of the ROD begins with your receipt of this letter (Special Notice);

3. General and site-specific information to assist you in these negotiations; and
4. A proposed consent decree, and proposed administrative consent order, as described below.

#### **DEMAND FOR PAYMENT**

As of February 3, 1994 EPA has paid unreimbursed costs in excess of \$4,434,790.57 for response activities related to the Site. Although this figure may not include all applicable costs incurred to date, the figure represents EPA's most recent calculation. Furthermore, additional costs, including oversight and related enforcement costs may continue to be incurred.

By this letter, EPA demands that Congoleum reimburse the Agency for unreimbursed past costs of at least \$4,434,790.57. Failure to pay, or delay in payment, may subject Congoleum to liability for increased costs associated with these past costs including, but not limited to, interest and enforcement costs. Interest on amounts for which you are liable continues to accrue as provided by applicable law.

You may contact the following person to arrange for payment of the above-described costs:

Christina M. Valente  
Assistant Regional Counsel (3RC33)  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107  
215-597-3602

#### **SPECIAL NOTICE NEGOTIATIONS MORATORIUM**

EPA has determined that use of the "special notice" procedures specified in section 122 of CERCLA, 42 U.S.C. § 9622, will facilitate a settlement between EPA and Congoleum for implementation of this remedial action at the Site. Therefore, pursuant to that section, your receipt of this letter triggers a sixty (60) day moratorium on certain EPA response activities at the Site. During this sixty (60) day period, Congoleum is invited to submit a good faith proposal (defined below) to conduct and/or finance such remedial action and negotiate a consent decree (described below) under which Congoleum will perform such work. If EPA determines that such a good faith offer has been timely received, the Agency

will provide an additional sixty (60) days to finalize the consent decree. When approved by EPA and the United States Department of Justice, the consent decree will then be filed in federal court.

EPA encourages Congoleum's participation by submitting a good faith proposal as defined below.

*Good Faith Proposal*

A good faith proposal to conduct or finance the remedial action is a written proposal that demonstrates Congoleum's qualifications and willingness to perform such work and includes the following elements:

1. A statement of willingness and financial ability by Congoleum to implement the requirements of the ROD, as amended, and proposed consent decree;
2. A demonstration of Congoleum's technical capability to conduct the work, including the identification of the firm(s) Congoleum intends to retain to conduct all or portions of such work or a description of the process Congoleum will use to select the firm(s);
3. A statement of Congoleum's willingness and ability to reimburse EPA for costs incurred in overseeing the performance of the work as well as EPA's past costs (as described above);
4. Comments, if any, on the proposed consent decree and on the proposed administrative order (see below);
5. The name, address, telephone, and telefax number (if any) of the person(s) who will represent Congoleum in negotiations for a consent decree.

*Consent Decree*

Section 122(d)(1)(A) of CERCLA, 42 U.S.C. § 9622(d)(1)(A), requires that settlements for remedial action be entered in the appropriate federal district court in the form of a consent decree. Enclosed with this letter you will find a site-specific draft of EPA's model consent decree. This model provides boilerplate language for most provisions in order to standardize CERCLA consent decrees as much as possible and expedite CERCLA settlements. The United States will commence negotiations with a document containing language which, for the most part, is the same language the Government will expect in a final settlement because it reflects legal and procedural terms that have been found acceptable to both EPA and the regulated community in a large number of situations. Your decision to submit a good faith proposal to perform the work

should be made with the understanding that the terms appearing in the draft consent decree are substantially the terms which EPA expects to appear in the final settlement.

Also enclosed find a proposed administrative consent order ("Order") which provides that Congoleum will commence remedial design activities upon the effective date of the Order. The Order need not be entered in Federal court and will enable Congoleum to commence design activities prior to entry of the remedial action consent decree. The Order will remain in effect until the consent decree is entered. EPA encourages Congoleum to enter into such an Order.

*PRP Steering Committee*

EPA encourages good-faith negotiations between Congoleum and EPA and between DuPont and other potentially responsible parties ["PRPs"]. To facilitate these negotiations, EPA has enclosed a list of other PRPs to whom this notification has been sent. Inclusion on, or exclusion from, this list does not constitute a final determination by EPA concerning the liability of any party with respect to the Site.

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is very important for successful negotiations with EPA.

*PRP Response/EPA Contact Person*

Congoleum is encouraged to contact EPA as soon as possible to state its willingness to participate in negotiations relating to the Site. Specifically, Congoleum has sixty (60) calendar days from receipt of this letter to provide EPA with a written proposal as described above. You may respond individually or through a steering committee if such a committee has been formed. If EPA does not receive a timely response, EPA will assume that Congoleum does not wish to negotiate a resolution of its liabilities in this matter and that Congoleum has declined any involvement in performing the response activities described above. In such event, EPA may, among other things, issue an administrative order directing Congoleum to perform the response action; seek to file an amended action in federal court to obtain a court order directing Congoleum to perform the response action; and/or perform such response action and seek reimbursement from liable parties.

If a proposal is submitted which EPA determines is not a good faith offer, you will be notified in writing of EPA's decision to end the negotiations moratorium and the reasons therefor. Congoleum may be liable for performing the response action pursuant to a unilateral administrative order or court order and/or

reimbursing EPA for the cost of response actions performed by EPA.

Your response to this letter, including written proposals to perform the remedial action selected for the Site, should be sent to:

Eric Newman (3HW42)  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107  
215-597-0910

ADMINISTRATIVE RECORD

Pursuant to section 113(k) of CERCLA, 42 U.S.C. § 9613(k), EPA has established an administrative record which contains documents forming the basis of EPA's selection of response action for the Site. The administrative record file is available to the public for inspection and comment. You may wish to review the administrative record to assist you in responding to this letter, but your review should not delay such response. Copies of the file are located both at the EPA Region III office and:

Delaware Department of Natural Resources  
and Environmental Control  
715 Grantham Lane  
New Castle, Delaware 19720  
302-323-4540

EPA will consider comments received, if any, after the close of the comment period in accordance with 40 C.F.R. § 300.825.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

If you or your attorney have any questions pertaining to this matter, please direct them to Christina M. Valente at 215-597-3602.

Sincerely,

  
Abraham Ferdas, Associate Division  
Director for Superfund Programs

cc: Robert Kuehl (Delaware DNREC)  
Jill Fallon (DOI)  
Mark Barash (DOI)  
Kirsten Erickson (NOAA)  
Christina M. Valente (EPA)  
Catherine M. Rojko (DOJ)  
Cherese Peters (EPA)

Enclosure: Draft Consent Decree  
Draft Administrative Order on Consent  
for Remedial Design  
Listing of Recipients of Special Notice Letters

P 342 226 883



## Receipt for Certified Mail

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Street and No <b>1102 Phila National Bank Bldg</b>	
P.O., State and ZIP Code <b>Phila PA 19107</b>	
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Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
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PS Form 3800, June 1991

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2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
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6. Save this receipt and present it if you make inquiry

U.S. GPO: 1991-302-916

PS Form 3800, June 1991 (Reverse)



- ...or 2 for additional services.  
... items 3, and 4a & b.
- ✓ Print your name and address on the reverse of this form so that we can return this card to you.
  - Attach this form to the front of the mailpiece, or on the back if space does not permit.
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  - The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

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2. ☐ Registered Delivery

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3. Article Addressed to:

Mark M. Wilcox  
Printer, Biddle + Reath  
20 Philadelphia National Bank Bldg.  
Mil., PA 17107  
Attorneys for Diamond State  
Telephone

Signature (Addressee)

Signature (Agent)

4a. Article Number

P 342 226 883

4b. Service Type

- |   |  |
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Eric Newman (3Hw40)  
841 Chestnut Bldg.  
Phila., PA 19107